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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1933.

No. 1073.

E. Forrest Mitchell, Insurance Commissioner of the State of California,
Petitioner,

vs.

Bertha E. Maurer and International Re-Insurance Corporation, a corporation,
Respondents.

BRIEF FOR THE RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

I.

STATEMENT OF THE CASE.

With the additions herein noted, we concur in the statement of the case contained in petitioner's Petition for Writ of Certiorari and Brief in support thereof (pp. 6-9).

Respondent International Re-Insurance Corporation is a corporation organized and existing under the laws of Delaware, and, prior to April 19th, 1933, conducted an insurance business in practically every state of the United

States, including California. [R. p. 4.] On April 19th, 1933, in an action brought by a creditor for the appointment of general receivers in the Court of Chancery in the State of Delaware, in and for New Castle County, entitled "Bertha E. Maurer, Plaintiff, vs. International Re-Insurance Corporation, a corporation, Respondent," Arthur G. Logan of Wilmington, Delaware, Carl M. Hansen of Philadelphia, Pennsylvania, and George DeB. Keim of Edgewater Park, New Jersey, were appointed receivers for all of the property and assets of said International Re-Insurance Corporation. [R. pp. 30-36.] Subsequent to their appointment, but on the same day, to-wit, April 19th, 1933, Arthur G. Logan, Carl M. Hansen and George DeB. Keim, as primary receivers of respondent corporation in the State of Delaware, filed, in the District Court of the United States for the Southern District of California, the petition for the appointment of ancillary receivers, referred to in petitioner's brief (p. 6). The caption of this petition or bill of complaint was "Bertha E. Maurer, Plaintiff, vs. International Re-Insurance Corporation, Respondent." [R. p. 3.] This was the identical caption of the bill for the appointment of primary receivers filed in the Delaware court. [R. p. 20.] To the extent that the petitioners were revealed in the body of the bill to be the primary receivers, and not the complainant designated in the caption, a discrepancy existed between the caption and the body of the bill. We shall comment in our argument upon the significance which petitioner endeavors to attach to this fact. However, it clearly appears from the bill who the petitioners were and what their status was. It was alleged that the petitioners had been appointed receivers for International Re-Insur-

ance Corporation in the Delaware proceedings, which proceedings had been brought for the purpose of having receivers appointed for all of the property and assets of the corporation wherever situated. [R. p. 4.] It was further alleged that the corporation owned property and assets in the City of Los Angeles, State of California, that the petitioners were informed and believed that certain creditors of the corporation were threatening suits and attachments against the property of the corporation, that the corporation had no defense to these threatened suits, and that if such attachments were levied, irreparable damage would be the result to the creditors of the corporation and to the primary receivership. [R. p. 5.] Specific reference was made to the bill filed in the Delaware proceedings and the order made thereon. [R. p. 4.] The bill prayed that receivers be appointed by the District Court ancillary to the primary proceedings in the State of Delaware.

As stated in petitioner's brief (p. 8), on April 25th, 1933, with leave of court [R. p. 37], amendments to this bill were filed in the District Court. By these amendments there were added to the original bill and made a part thereof, exemplified copies of the Bill for Appointment of Receivers filed in the Court of Chancery, State of Delaware [R. pp. 20-25] and the order appointing primary receivers in that court [R. pp. 30-36]. The answer of respondent International Re-Insurance Corporation, which is also mentioned in petitioner's brief (p. 8), was filed subsequent to the filing of these amendments. [R. pp. 38-39.]

The petitioner appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the orders

of the District Court denying his motion to vacate the receivership, and denying his motion for rehearing of the original motion. Without deciding as to whether the original bill was sufficient, the court below held that the amendments related back to the time of the original filing, and, as the original bill was filed in the District Court before the filing of the action by the petitioner in the State Court, that the District Court acquired prior jurisdiction.

The petitioner seeks a writ of certiorari from this court upon the sole ground that the Circuit Court of Appeals erred in not holding that the bill, as amended, did not date from the time of filing the original bill, but only from the time of the filing of the amendments, and that, since the proceeding in the State Court was filed prior to the time of the filing of the amendments in the District Court, although subsequent to the filing of the original bill in that court, the State Court thereby acquired prior jurisdiction.

As a necessary premise to his argument upon this point, petitioner in his brief (pp. 10-17) seeks to maintain that the original bill filed in the District Court not only insufficiently alleged a cause of action for the appointment of ancillary receivers, but was a complete nullity, so that the amendments thereto could not relate back to the time of filing of the original bill and that the court below should have so held.

We shall discuss these two points in the order in which they appear in petitioner's brief.

II.

ARGUMENT.

SUMMARY OF RESPONDENTS' ARGUMENT.

POINT A.

THE ORIGINAL BILL OF COMPLAINT ALLEGED A CAUSE OF ACTION FOR THE APPOINTMENT OF ANCILLARY RECEIVERS.

POINT B.

THE BILL OF COMPLAINT, AS AMENDED, WAS EFFECTIVE AS OF THE TIME OF FILING THE ORIGINAL BILL.

POINT A.

The Original Bill of Complaint Alleged a Cause of Action for the Appointment of Ancillary Receivers.

The petitioner concedes that the Bill of Complaint, as amended, alleged a cause of action for the appointment of ancillary receivers by the District Court and that the District Court had jurisdiction to make the appointment on the amended bill. His argument is that the original Bill of Complaint was entirely nugatory, so that amendments thereto could not relate back to the time of the filing of the original bill. To support his contention in this regard, he specifies in his brief (pp. 10-17) six objections to the original Bill of Complaint.

The first objection which petitioner raises has already been adverted to in our statement of the case, to the effect that the caption of the bill was identical with that of the

proceeding in the State Court of Delaware, in which Bertha E. Maurer was the complainant, whereas the actual petitioners in the proceeding filed in the District Court in California were the primary receivers who had been appointed in the Delaware proceedings. It is true that the original attorneys who filed the proceedings in the District Court apparently deemed the caption of the Delaware proceeding to be the proper caption for the ancillary proceeding in the District Court of California. Justification for this procedure appears in the case of *Bluefields S. S. Co. v. Steele,* 184 Fed. 584, 587. However, whether or not the caption of the bill was technnically correct, the body of the bill clearly alleged a cause of action on the part of the primary receivers for the appointment of ancillary receivers by the District Court. The bill placed before the court the fact that proceedings for the appointment of primary receivers had been instituted in the State of Delaware, the state of incorporation of the respondent corporation, that primary receivers had been appointed upon that petition, and that the primary receivers were the petitioners in the proceeding before the District Court. The bill, therefore, established beyond cavil that the primary receivers were the petitioners, and any discrepancy resulting from the use of the caption of the proceedings in Delaware constituted, at most, a trivial, technical defect in the bill which had no bearing whatsoever upon the question as to whether or not a bill of complaint for the appointment of ancillary receivers had actually been filed on April 19th, 1933.

The next three objections, raised by the petitioner in his brief (pp. 11-12), are that the Bill of Complaint failed to allege the jurisdictional amount and diversity of citizen-

ship between the parties, conferring upon the District Court jurisdiction, and that the bill contained no allegations of insolvency. The petitioner cites no authority to support his assumption that allegations of jurisdictional amount, diversity of citizenship and insolvency are necessary to sustain an action for the appointment by a Federal Court of receivers ancillary to a primary proceeding. This omission is understandable in view of the fact that it has been repeatedly held that a Federal Court has jurisdiction to appoint receivers ancillary to a receivership proceeding in another jurisdiction upon the ground of comity and without regard to allegations of insolvency or the usual requisites of jurisdictional amount and diversity of citizenship.

Sands v. E. S. Greeley & Co., 88 Fed. 130 (C. C. A., Second Circuit);

Shinney v. North American Savings, Loan & Building Co., 97 Fed. 9 (C. C. D., Utah);

Rust v. United Waterworks Co., 70 Fed. 129 (C. C. A., Eighth Circuit);

Bluefields S. S. Co. v. Steele, 184 Fed. 584 (C. C. A., Third Circuit);

Ward v. Foulkrod, 264 Fed. 627 (C. C. A., Third Circuit);

Bluefields S. S. Co. v. Steele, 192 Fed. 23 (C. C. A., Third Circuit);

Seested v. Bonfils, 33 F. (2d) 185 (D. C. D., Colo.);

Trustees System Co. of Pennsylvania v. Payne, 65 F. (2d) 103 (C. C. A., Third Circuit);

Walker v. United States Light & Heating Co., 220 Fed. 393 (D. C. S. D. N. Y.);

Reed v. Alaska Mines Corporation, 6 Alaska 370.

The same principle has been applied in the State Courts where, under the doctrine of comity, one court will appoint receivers ancillary to receivership proceedings in another state, without regard to the question of jurisdiction.

Southern Colonization Co. v. Parten, 83 Fla. 300, 91 So. 263;

Bodge v. Skinner Packing Co., 115 Neb. 41, 211 N. W. 203.

Federal Courts will make such ancillary appointment not only when based upon proceedings in other Federal Courts, but also when based upon primary proceedings in a State Court.

Sands v. E. S. Greeley & Co., 88 Fed. 130;

Shinney v. North American Savings, Loan & Building Co., 97 Fed. 9;

Rust v. United Waterworks Co., 70 Fed. 129;

Seested v. Bonfils, 33 F. (2d) 185.

The case of *Sands v. E. S. Greeley & Co.,* 88 Fed. 130, is representative of the principle applied in the cases above cited. There a receiver was appointed in a State Court in Connecticut. He then instituted proceedings in a Federal District Court in New York for his appointment as a receiver ancillary to the proceedings in Connecticut. He alleged, as grounds for appointment, his appointment in the primary proceedings. After discussing the powers of a primary receiver, the court said (pp. 132-133):

"When the administration extends over assets located in several jurisdictions, it is often convenient to apply, in advance, for the assistance of the differ-

ent courts; hence the practice has become common of applying for auxiliary or ancillary appointments. When such an application is made, the court to which it is addressed exercises its own original jurisdiction. The decree in the court of the domicile of the corporation is evidence in every other state that the corporation is insolvent, and that a proper case exists in that state for the appointment of a receiver, and it is to be respected accordingly, in obedience to the constitutional provision whereby full faith and credit is to be given in each state to the records and judicial proceedings of every other state of the Union. * * * Ordinarily, in comity to the proceeding of another court of co-ordinate jurisdiction, it will appoint an ancillary receiver, and assume administration in aid of the primary receiver."

The fifth objection, appearing intermittently in petitioner's brief (pp. 11, 12, 14-16), is that the original bill failed to set forth the nature of the proceedings in which the primary receivers were appointed. In this connection he states in his brief (p. 12): "The bill did not set forth the nature of the proceeding in which the primary receivers were appointed." The petitioner errs in this statement. The Bill of Complaint, as originally filed, alleged [R. p. 4] that the petitioners therein had been appointed primary receivers in a proceeding brought in the Court of Chancery in the State of Delaware "for the purpose of having a receiver or receivers appointed of all and singular the property and assets of every nature and wheresoever situated of the respondent" corporation. It thus appears that the nature of the proceeding in the Delaware Court was clearly alleged. As stated in the case of *Sands*

v. E. S. Greeley & Co., 88 Fed. 130, in the language above quoted, an allegation of insolvency was unnecessary since the allegation that the Delaware Court had entered an order appointing primary receivers was the essential allegation upon which the District Court in California might determine whether or not ancillary receivers should be appointed.

Petitioner seeks to rely upon the case of *Bluefields S. S. Co. v. Steele,* 184 Fed. 584, in support of this phase of his attack upon the sufficiency of the original bill. The language, quoted by petitioner in his brief (pp. 15-16) from the opinion in that case, does not support petitioner's contention when read in conjunction with the entire opinion and the facts involved. There the complainant brought an action in a Federal Court in Pennsylvania, seeking to have ancillary receivers of the defendant corporation appointed for the sole purpose of prosecuting an action against a third party which the complainant alleged the defendant refused to prosecute. The bill alleged that a suit had been filed in a Federal District Court in Louisiana "on account of the various matters and things set up in said bill"; that in said bill there was a prayer for the appointment of a receiver; and that pursuant to this prayer a receiver had been appointed. The bill in the Pennsylvania proceedings contained no other allegations regarding the nature or purpose of the suit in Louisiana. In reversing the order of the Pennsylvania District Court appointing receivers, the Circuit Court of Appeals for the Third Circuit held that, since the nature and purpose of the Louisiana proceedings had not been alleged and it could not be determined whether the receiver appointed in Louisiana was a general receiver or a mere custodian for

the property involved in the action, sufficient facts had not been alleged for the court to determine the propriety of an ancillary receivership. The inapplicability of the decision to the facts in the instant case is apparent, in view of the fact that the original Bill of Complaint filed in the District Court alleged that an action had been brought in Delaware for the appointment of receivers for all of the property and assets of the corporation, a specific allegation of a general liquidation receivership, as contrasted with a receivership for the custody of specific property involved in litigation.

The final objection made in petitioner's brief (p. 17) is that since the bill failed to allege that the complainant was a secured creditor, the District Court had no jurisdiction to appoint the ancillary receivers, relying in support of this contention on the case of *Pusey & Jones Co. v. Hanssen,* 261 U. S. 491, 67 L. ed. 763. In that case this court held that a Delaware statute, permitting a receivership at the instance of a simple contract creditor, could not enlarge the jurisdiction of the Federal Court, and that a simple contract creditor could not, therefore, maintain an action for receivership in the Federal Courts when the objection was raised by the defendant, but that when the objection was not so raised, the action could be maintained. In that case there was not involved the question of a Federal Court appointing receivers ancillary to a primary proceeding in another jurisdiction, the application there being for a primary appointment. The principle involved in the case of *Pusey & Jones Co. v. Hanssen, supra,* therefore, has no application to the proceedings in the instant case for the appointment of ancillary receivers.

In any event, the objection that the proceedings had been instituted by a simple contract creditor is a defense which may be waived by the defendant and which, when waived, is not available to any other party.

In re Metropolitan Railway Receivership (Matter of Reisenberg), 208 U. S. 90, 52 L. ed. 403, 412;

Pusey & Jones Co. v. Hanssen, 261 U. S. 491, 67 L. ed. 763.

The respondent corporation, in its answer, admitted all of the allegations of the bill and joined in the request for the appointment of receivers, thereby waiving the objection. The court below thus disposed of this contention, relying upon the cases immediately above cited.

In summation of the various objections made by the petitioner to the original Bill of Complaint, we contend that, instead of being nugatory and deficient to the extent that it should be regarded as though no bill of complaint were on file until the amendments were filed, the original Bill of Complaint properly alleged a cause of action for the appointment of ancillary receivers by the District Court. Even conceding, for the purpose of the argument, that the bill contained technical defects, so that the cause of action was not fully alleged, nevertheless it alleged sufficient facts to establish to the District Court that a cause of action existed, and the amendments, which concededly remedied the defects, related back to the time of the original filing. This point we shall discuss under the next heading.

However, before proceeding with this discussion, we desire to deal with a point presented only inferentially and

by implication in petitioner's brief. At the bottom of page 12 of his brief, petitioner speaks of the Bill of Complaint, filed in the District Court, as "a sham pleading". On page 14 the petitioner claims that the bill evidences undue haste in its preparation and filing, reference being made in this connection to the fact that the executive committee of respondent corporation authorized the filing of an answer by the corporation to the contemplated proceedings for ancillary receivership in the District Court in California, on April 18th, 1933, the same date which appeared on the verification of the Bill of Complaint. Again, on pages 23-24 of his brief, petitioner refers to the proceedings in the District Court as brought "by individuals racing into court for a friendly, private receivership on a pretended bill of complaint", for the purpose of defeating the jurisdiction of the State Court. All of these references are correlated with the citation of the case of *Harkin v. Brundage,* 276 U. S. 36, 72 L. ed. 457, a case in which this court upheld the jurisdiction of a State Court as against a Federal Court, upon the ground that the appointment of receivers in the Federal proceedings had been obtained through collusion and a fraud upon both the Federal and State Courts. It is evident, therefore, that petitioner, without essaying a direct attack upon the proceedings because of fraud and collusion, is attempting, by innuendo and implication, to cast upon the proceedings a somewhat sinister and collusive aspect. He makes no claim that all of the facts were not fully and fairly disclosed to the District Court in California, or that any attempt of any nature whatsoever was made to mislead the District Court. The only factual complaint the petitioner voices, and the only complaint he could make on the

facts, is that the primary receivers evidently preferred, for the purposes of an efficient and cooperative liquidation of the entire affairs of the corporation, to have the ancillary receivership administered by the Federal District Court in California rather than by the State Court through the petitioner. That the primary receivers were strictly within their rights in exercising this preference is clear from the case of *In re Metropolitan Railway Receivership (Matter of Reisenberg)*, 208 U. S. 90, 52 L. ed. 403, where this court said (52 L. ed. 413):

> "That the parties preferred to take the subject-matter of the litigation into the Federal courts, instead of proceeding in one of the courts of the state, is not wrongful. So long as no improper act was done by which the jurisdiction of the Federal court attached, the motive for bringing the suit there is unimportant."

This principle has been reiterated many times.

May Hosiery Mills v. United States District Court, 64 F. (2d) 450 (C. C. A., Ninth);

In re Richardson's Estate, 294 Fed. 349, 359 (D. C. N. D. Tex.);

American Brake S. & F. Co. v. Pere Marquette R. Co., 205 Fed. 14 (C. C. A., Sixth);

Horn v. Pere Marquette R. Co., 151 Fed. 626 (C. C. E. D., Mich.).

Since the petitioner has attempted no direct attack upon the proceedings in the District Court upon the grounds of

collusion, we appreciate that the innuendo contained in his brief, and the foregoing reply thereto are asides, not pertinent to the presentation, and constitute an unwarranted burden upon the court. However, we have not felt justified in permitting the petitioner's innuendo in this connection to go unanswered.

POINT B.

The Bill of Complaint as Amended Was Effective as of the Time of Filing the Original Bill.

As has been stated, petitioner's discussion of the original Bill of Complaint, contained in his brief (pp. 10-17), is preliminary to the one ground upon which he seeks a writ of certiorari from this court. The balance of his brief (pp. 18-23) is devoted to an attempt to maintain the proposition that where a bill of complaint fails to state a cause of action, amendments thereto do not relate back to the time of the filing of the original bill, but that amendments can only relate back where the bill of complaint states a cause of action, but states it, as he says in his brief (p. 18), "imperfectly or defectively". On page 19 of his brief he refers to the case of *Illinois Surety Co. v. United States,* 240 U. S. 214, 60 L. ed. 609, as being a case involving a bill "defectively pleading, but nevertheless pleading" a cause of action. On page 23 of his brief he contends that the court below should have determined whether the original bill of complaint "stated a cause of action defectively, or whether it failed to state any cause of action".

The confusion in petitioner's argument results, in part, from his failure to distinguish between a bill of complaint,

based upon an existing cause of action, but which fails properly to allege it, and a bill of complaint which shows that no cause of action exists at the time the bill is filed. This distinction is, indeed, apparent from petitioner's discussion on pages 18-19 of his brief of the cases of *United States ex rel. Texas Portland Cement Co. v. McCord,* 233 U. S. 157, 58 L. ed. 893, and *American Bonding & Trust Co. v. Gibson County,* 145 Fed. 871 (C. C. A., Sixth). In these cases, as petitioner's own discussion discloses, the complaints showed that the respective causes of action had not accrued at the time the complaints were filed, and that the actions were, therefore, prematurely brought. Obviously, since no cause of action existed when the original complaints were filed, amendments thereto could not relate back to the time of the original filing. The distinction is made clear in the decision of this court in *United States ex rel. Texas Portland Cement Co. v. McCord, supra,* where this court said (58 L. ed. 898):

> "As to the effect of the filing of the amendment by the original plaintiffs on January 9, 1911, it is elementary that an amendment dates back to the filing of the petition, and is to supply defects in the cause of action then existing, or at most to bring into the suit grounds of action which existed at the beginning of the case. In this case there was no cause of action to amend."

In support of his argument, petitioner, on pages 20-23 of his brief, cites several cases, all of which were decided by State Courts in the states of Louisiana, Georgia, Arkansas and Texas. The Georgia, Arkansas and Texas cases, cited and quoted from by petitioner, are not authority for his argument. They simply applied the universal

rule that a new and different cause of action from that attempted to be alleged in the original complaint may not be supplied by amendment. The question involved in the Louisiana cases was whether the Louisiana practice permitted amendments at all, where they supplied omissions which rendered the complaint vulnerable to attack for not stating a cause of action.

Contrary to petitioner's contention, the rule is that, where a complaint fails to allege a cause of action but is based upon an existing cause of action, amendments supplying the necessary allegations will be permitted and that the amendments relate back to the date of filing the original complaint. The rule is clearly exemplified in the opinions of this court in *United States ex rel. Texas Portland Cement Co. v. McCord, supra,* above discussed, and in *Illinois Surety Co. v. United States,* 240 U. S. 214, 60 L. ed. 609; *Fleischmann C. Co. v. United States Use of Forsberg,* 270 U. S. 349, 70 L. ed. 624, and *Shields v. Coleman,* 157 U. S. 168, 39 L. ed. 660.

In *Illinois Surety Co. v. United States, supra,* suit was brought under a statute which provided that the action must be instituted not less than six months, nor more than one year after final settlement of certain governmental contracts. The allegation of final settlement was essential to the pleading of a cause of action. This court said (60 L. ed. 615):

> "With respect to the amendment of the complaint, it is apparent that, as there was an existing right of action under the statute at the time the suit was brought, the case was not within the decision in United States *ex rel.* Texas Portland Cement Co. v. McCord, 233 U. S. 157, 58 L. ed. 893, 34 Sup. Ct.

> Rep. 550. No new or different cause of action was alleged in the amended complaint. The court merely permitted the defective statement of the existing right to be corrected by the addition of appropriate allegations, and in this there was no error."

In *Fleischmann C. Co. v. United States Use of Forsberg, supra,* this court said (70 L. ed. 631):

> "It is clear that the amended declaration and petitions did not set up new causes of action, but merely supplemented by appropriate allegations the defective statements of the rights which had existed when the original declaration and petitions were filed; and that the amendments when made related back, by operation of law, to the dates on which the original suit was brought and the original petitions filed."

The opinion of this court in *Shields v. Coleman,* 157 U. S. 168, 39 L. ed. 660, specifically refutes petitioner's claim in this connection. There this court said (39 L. ed. 664):

> "Undoubtedly the circuit court had authority under the bill filed June 6, 1892, to make the order appointing the receiver and taking possession of the property. Even if it were conceded that the bill was imperfect and that amendments were necessary to make it a bill complete in all respects, it would not follow that the court was without jurisdiction."

In the lower Federal Courts, the rule is further exemplified by the many cases which have uniformly held that jurisdictional allegations may be supplied by amendment,

and that, when so supplied, the amendments relate back to the time of the original filing.

Chesapeake & O. Ry. Co. v. Coffey, 37 F. (2d) 320 (C. C. A., Fourth), (Cert. den. 281 U. S. 749, 74 L. ed. 1160);

Interstate Refineries v. Barry, 7 F. (2d) 548 (C. C. A., Eighth);

Bison State Bank v. Billington, 228 Fed. 116 (C. C. A., Fifth);

Baltimore & O. R. Co. v. McLaughlin, 73 Fed. 519 (C. C. A., Sixth);

Bowden v. Burnham, 59 Fed. 752 (C. C. A., Eighth).

In each of these cases the bill of complaint failed to allege diversity of citizenship, which allegation was supplied by amendments to the original bill, and the amendments were held to relate back to the time of the original filing. Petitioner does not make clear what distinction he claims between a failure to allege jurisdictional allegations and a failure to allege a cause of action. As a matter of fact, jurisdictional allegations are as necessary to the pleading of a cause of action in a Federal Court as are any other facts.

Cases arising under the Federal Employer's Liability Act and decided by this court likewise illustrate the rule.

Missouri K. & T. R. Co. v. Wulf, 226 U. S. 570, 57 L. ed. 355;

New York Central & H. R. R. Co. v. Kinney, 260 U. S. 340, 67 L. ed. 294.

The opinion of this court in the case of *United States v. Memphis Cotton Oil Co.,* 288 U. S. 62, 77 L. ed. 619, while passing on the sufficiency of an amended claim for tax refund, discussed the analogy afforded by amendments to pleadings.

A recent statement of the rule from the lower Federal Courts is to be found in *Maryland Casualty Co. v. Gerlaske,* 68 F. (2d) 497 (Adv. Sh.) (C. C. A., Fifth), where the court said (p. 499):

> "* * * it is coming to be settled law, certainly in Texas and in the federal courts, that a cause of action is, broadly speaking, the occurrence which gave the litigation rise, and that, if it is set out sufficiently to identify it, it may be freely made more specific by amendment."

To the same effect are the decisions in the state courts.

Ruiz v. Santa Barbara Gas etc. Co., 164 Cal. 188;
Cowell v. Snyder, 171 Cal. 291;
Rabe v. Western Union Tel. Co., 198 Cal. 290.

In *Ruiz v. Santa Barbara Gas etc. Co.,* 164 Cal. 188, plaintiff sued for wrongful death. The court said (pp. 190, 194-195):

> "The complaint did fail to state a cause of action, in that it failed to allege that the deceased left any heir, an allegation absolutely essential in an action of this character.
>
> * * * * * * * * *

> If the amended complaint did not attempt to set up a new and different cause of action from that attempted to be set up in the original complaint, there is nothing in the contention made by respondent based upon the statute of limitations. Where there is no attempt to state a new cause of action in an amended complaint, but merely the addition of matters essential to make the original cause of action complete, the amendment, though made after the expiration of the period of limitation, relates back to the time of the commencement of the action."

The original Bill of Complaint, we contend, sufficiently alleged a cause of action for the appointment by the District Court of ancillary receivers. In any event, there can be no question that it contained sufficient allegations to establish to the District Court that a cause of action then existed for the appointment of ancillary receivers by that court, and the petitioner makes no effort to deny that the appointment of the primary receivers created a cause of action for the appointment of ancillary receivers by the District Court. If the bill failed to allege all of the facts necessary to set forth this cause of action, these omissions were properly supplied by the amendments filed to the bill, and these amendments were effective as of the time of the original filing, under the cases above discussed.

CONCLUSION.

We respectfully submit that the original Bill of Complaint stated a cause of action for the appointment of ancillary receivers by the District Court; that the bill, as amended, was effective as of the time the original bill was filed; that the court below properly affirmed the orders of the District Court, denying petitioner's Motion to Vacate Receivership and denying petitioner's Motion for Rehearing; and that the Petition for Writ of Certiorari herein should be denied.

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